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Letter dated 21 November 2008 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council

I have the honour to transmit herewith the assessments of the President and the Prosecutor of the International Criminal Tribunal for Rwanda on the implementation of the completion strategy of the Tribunal, pursuant to Security Council resolution 1534 (2004), as at 3 November 2008 (see enclosure).

I should be grateful if you would transmit the enclosed report to the members of the Security Council.

(*Signed*) Dennis Byron
President

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Enclosure

[Original: English and French]

Report on the completion strategy of the International Criminal Tribunal for Rwanda

(as at 3 November 2008)

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INTRODUCTION

1. In 2003, the International Criminal Tribunal for Rwanda ("Tribunal"), in accordance with Security Council Resolution 1503 (2003), formalized a strategy ("Completion Strategy") to achieve the objectives of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010.

2. The present report, in conjunction with previous submissions to the Security Council pursuant to its Resolution 1534 (2004), provides an overview over the Tribunal's progress to date in implementing the Completion Strategy.[1]

1. ACTIVITIES IN CHAMBERS

3. The Tribunal's judicial activities emanate from the three Trial Chambers in Arusha and the Appeals Chamber, located in The Hague. Each case before the Tribunal is heard at first instance by a Trial Chamber of three permanent and *ad litem* Judges, and, if appealed, by five permanent judges of the Appeals Chamber.

A. Activities at First Instance

4. Since May 2008, one judgement concerning one accused has been delivered.[2] Five cases concerning eight accused are in the judgement drafting phase,[3] with three judgements to be delivered in December 2008. Evidence in two cases concerning five accused has been completed, with the closing arguments yet to be heard.[4] Five trials involving 15 accused are currently ongoing.[5] Six single-accused trials, including one contempt of court case, are scheduled to commence within the next months.[6] Furthermore, the Office of the Prosecutor has requested the referral of five single-accused cases to Rwanda. The Appeals Chamber has recently confirmed the Trial Chambers' denial of the referral motions in two cases.[7]

a. Judgements (Annex 1(A))

5. On 24 September 2008, Trial Chamber III delivered its judgement in the case of *Siméon Nchamihigo*. Nchamihigo, the former Deputy Prosecutor of Cyangugu *Préfecture*, was convicted of

[1] See the reports submitted to United Nations on 14 July 2003 and 29 September 2003, in connection with the General Assembly resolution 57/289 (2003) and the Tribunal's request to increase the number of *ad litem* judges sitting "at any one time". Completion Strategy reports were submitted to the President of the Security Council on 30 April 2004, 19 November 2004, 23 May 2005, 30 November 2005, 29 May 2006, 8 December 2006, 31 May 2007, 20 November 2007 and 13 May 2008.

[2] *Nshamihigo*: further explanation is provided in section 5.

[3] *Bagasora et al.* (Military I); *Bikindi*; *Zigiranyirazo*; *Renzaho*; *Rukundo*: further explanation is provided in sections 6 to 9.

[4] *Nsengimana*; *Bizimungu et al.*: further explanation is provided in sections 10 to 12.

[5] *Nyiramasuhuko et al.* (Butare), *Ndindiliyimana et al.* (Military II), *Karemera et al.*, *Kalimanzira*, *Setako*: further explanation is provided in sections 13 to 18.

[6] *Nshogoza*, *Bagaragaza*, *Muvunyi*, *Ntwakulilyayo*, *Nzabonimana*, *Ngirabatware*: further explanation is provided in sections 19 to 24.

[7] *Kanyarugika* and *Munyiakazi*: further requests in the cases *Gatete*, *Hategekimana* and *Kayishema* are still pending, see explanation provided in sections 25 to 27.

genocide and extermination, murder and other inhumane acts as crimes against humanity based on his participation in the killing of Tutsi in April 1994 at various places in Cyangugu. In view of the nature of the multiple crimes committed and considering, in particular, Nshamihigo's prominent public position and responsibility as a representative of the Rwandan legal system as an aggravating circumstance, the Chamber sentenced the Accused to life imprisonment. During the trial, the Chamber heard 61 witnesses, including Nchamihigo, over 58 trial days.

b. Judgements to be Delivered Within the Coming Months (Annex 1 (B))

6. It is anticipated that five Judgements involving eight accused will be issued within the next months. Three of the Judgements are expected to be issued in December 2008.

7. During the reporting period, Trial Chamber I has been writing judgements in two cases, while at the same time conducting trial proceedings in two single-accused cases. The *Military I* trial spanned 408 trial days, during which 242 witnesses testified, and 1,584 exhibits were tendered into evidence. This case involves four former high-ranking military officials (Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva). Closing arguments were heard between 28 May and 1 June 2007. The judgement is scheduled to be delivered on 18 December 2008. In the trial of *Tharcisse Renzaho*, 53 witnesses testified over 49 trial days. The Chamber heard closing arguments on 14 and 15 February 2008.

8. A section of Trial Chamber II is engaged in judgement drafting in the *Emmanuel Rukundo* case, while in parallel sitting in trial proceedings in the complex multi-accused *Military II* case. In the *Rukundo* case, the Chamber heard closing arguments on 20 February 2008. Fifty witnesses testified over 66 trial days. The Judgement should be issued in the coming months.

9. Trial Chamber III is preparing two judgements. In the *Siméon Bikindi* case, the Chamber heard closing arguments on 26 May 2008 after 57 witnesses had testified over 61 trial days. A site visit in Rwanda was conducted in April 2008. The judgement is scheduled to be delivered on 2 December 2008. In the *Protais Zigiranyarazo* case, the Chamber heard closing arguments on 28 and 29 May 2008. The trial included the hearing of 67 witnesses over 88 trial days and a site visit to Rwanda in November 2007. The Judgement is scheduled to be delivered on 18 December 2008.

c. Cases where Evidence is Completed and Closing Arguments Will be Heard Soon (Annex 1(C))

10. In two cases concerning five accused, the evidence phase has been completed and the Chambers are awaiting the closing arguments. Judgements in both cases are expected in 2009.

11. Trial Chamber I substantially concluded the hearing of evidence in the case against *Hormisdas Nsengimana*, as projected, on 11 July 2008. Two final Defence witnesses were heard between 15 and 17 September 2008 by video-link. During the reporting period, the Chamber rendered six written and ten oral decisions. The parties will file their closing briefs by 5 December 2008.

12. Trial Chamber II continued sitting in the *Bizimungu et al.* case, which involves four co-accused. The trial resumed on 14 April 2008 and the Chamber sat continuously until 13 June 2008, when the evidentiary phase closed, pending the resolution of a number of outstanding evidentiary issues. Between 1 May and 13 June 2008, the Chamber heard 13 Defence witnesses for Prosper Mugiraneza, including the Accused. This was the last of the four co-Accused to present his case. The Chamber also heard two remaining witnesses for the third co-accused, Jérôme Bicamumpaka, and one Prosecution witness who had been recalled pursuant to a Trial Chamber order. In the reporting period, the Chamber rendered 25 written decisions and visited, between 5 and 10 October 2008, a number of sites in Rwanda. The Prosecution filed its closing brief on 1 October 2008. The Defence closing briefs are to be filed between 10 and 21 November 2008. The oral arguments are scheduled for the week commencing 1 December 2008.

d. Ongoing Trials (Annex 1(D))

13. Five cases, involving 15 accused, are currently on-going before the Trial Chambers. Three of these cases are multi-accused cases with six, four and three accused respectively, being tried jointly.

14. The Prosecution case against *Ephrem Setako* commenced on 25 August 2008 before Trial Chamber I. On 26 September 2008, the Chamber concluded the first segment of the Prosecution case, having heard 12 witnesses during 21 trial days. As the Chamber is heavily involved in judgement writing in the *Théoneste Bagosora et al.* case and the *Tharcisse Renzaho* trial, the case is scheduled to resume on 16 February 2009, subject to courtroom availability. It is expected that the Prosecution case will require a session of no longer than three weeks to complete. Three written and ten oral decisions were rendered in the reporting period.

15. Since 1 May 2008, two different sections of Trial Chamber II have been engaged in two separate trials. In the *Butare* case, involving six co-accused, Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Élie Ndayambaje, the section including Judges Sekule (presiding), Ramaroson and Bossa was sitting over 55 trial days. Kanyabashi, the fifth of the six accused, completed the presentation of his Defence. Three witnesses for Kanyabashi were heard from 1 May 2008 until 20 May 2008, when his Defence was declared closed save for two witnesses who were unavailable to testify at the time. While one witness was dropped, the other one is now scheduled to testify in November 2008. On 20 May 2008, the Defence for Ndayambaje, the last accused in the case, made its opening statement. From 2 June 2008 until 3 July 2008, the Chamber heard the testimonies of 13 witnesses for Ndayambaje. The Chamber adjourned the proceedings on 4 July 2008 instead of 10 July 2008 for lack of available witnesses. The trial resumed on 18 August 2008 after the judicial recess. From 18 August until 24 September 2008, the Chamber heard ten witnesses for Ndayambaje. The Chamber adjourned on 24 September 2008 instead of 1 October 2008 due to lack of witnesses. Two witnesses remain to be heard for Ndayambaje: The Accused himself has been testifying since 20 October 2008, a recalled prosecution witness will be heard from 29 October. Despite the early adjournments, the closing of evidence remains to be expected for mid-November 2008. Since 1 May 2008, the Chamber has issued

11 written decisions and orders including a decision allowing the recall of a Prosecution Witness by the Defence for Kanyabashi and two scheduling orders regarding the filing of the closing briefs.

16. Another section of Trial Chamber II, including Judges de Silva (presiding), Park and Hikmet, continued hearing the *Military II* case, concerning four co-accused former senior military officers. The case resumed on 26 May 2008 with the case of the second co-Accused Augustin Ndindiliyimana who finished presenting his defence on 23 June 2008. The Trial Chamber heard overall 41 witnesses for him. On the same date, the third co-Accused, François-Xavier Nzuwonemeye, commenced presenting his defence case. The Chamber went on judicial recess from 16 July and resumed on 8 September 2008 with the Defence for Nzuwonemeye which finished on 8 October 2008 after 28 witnesses had been heard. Proceedings resumed on 20 October 2008 for the commencement of the case of the fourth co-Accused, Innocent Sagahutu. For him, so far three witnesses have been heard. On 16 September 2008, the Chamber issued a Scheduling Order in which it directed that Sagahutu must finish his defence case by 5 December 2008. During the reporting period, the Chamber rendered twenty written and twelve oral decisions, including, on 22 September 2008, a decision granting in part defence motions claiming a violation by the Prosecutor of his obligation to disclose exculpatory material pursuant to Rule 68 of the Rules of Procedure and Evidence ("the Rules"). The Trial Chamber sat for 39 trial days. During 17 trial days, the unavailability of witnesses for the third co-Accused prevented the Chamber from sitting.

17. In Trial Chamber III, the proceedings in the case against *Callixte Kalimanzira* commenced on 30 April 2008 despite difficulties to find a permanent judge available to preside. The Prosecution closed its case on 30 June 2008, after having called 24 witnesses over 16 trial days. Due to the parallel involvement of the same bench in the *Karemera et al.* case (see below), the Defence case is scheduled to commence on 17 November 2008. It is projected to run over approximately five trial weeks and, due to the Christmas judicial recess, over two trial sessions with completion in the beginning of 2009. Judgement is scheduled for delivery in 2009. Since May 2008, the Chamber has rendered 12 decisions in this case. One of these decisions found that after the close of the Prosecution case, no conviction could be brought on certain allegations, thus clarifying the case that the Defence has to answer and expediting the proceedings.

18. Trial Chamber III also continued hearing evidence in the *Edouard Karemera et al.* case, involving three co-accused. Between 7 April and 15 May 2008, the Chamber heard 13 witnesses. It should be recalled that, during the same period, the same judges of this Chamber also heard the *Kalimanzira* case and that trial days were shared between the two cases. After a recess, allowing the Chamber to sit full time in the *Kalimanzira* case, the Chamber resumed the proceedings in *Karemera et al.*. From 7 until 16 July 2008, it heard nine witnesses for the defence of Karemera, one of the four co-Accused. The proceedings were scheduled to resume on 18 August 2008. However, due to the sudden serious illness of one co-accused, Mathieu Ngirumpatse, the Chamber adjourned the proceedings in light of the standards established by the Appeals Chamber on the right of an accused to attend his trial. The proceedings were scheduled to resume on 20 October 2008, but, on that date, Ngirumpatse required further medical analysis in Nairobi (Kenya). A week later, on 28 October 2008, the Chief Medical Officer of the Tribunal reported that Mathieu Ngirumpatse was unfit to attend any trial proceedings for at least six months. With Ngirumpatse's consent, the Chamber decided to proceed

and hear, in his absence, four Defence witnesses, called by Karemera, who were already present in Arusha. The evidence presented by these four witnesses raised issues that could have rendered difficult their appearance before the Chamber at a later stage. These four witnesses will be heard in the week of 10 November 2008. The Chamber will further hear the parties' arguments in regard to the severance of Ngirumpatse from the on-going trial of the other two co-Accused. Since May 2008, the Chamber has heard ten witnesses over a period of 20 trial days and delivered more than 45 decisions, including decisions related to the management of the trial and the presentation of evidence. As previously indicated, the evidence phase in this case will continue in 2009. Judgement delivery remains anticipated for the end of 2009.

e. Cases to Commence Within the Next Months (Annexes 2 and 3)

19. Six new trials will commence before the Tribunal in the first half of 2009. In the last report to the Security Council, it was noted that three detainees were waiting for their trials to commence, two Accused were waiting for completion of the judicial process for their transfer to the Tribunal and one person had been recently arrested for contempt of court.

20. The trial of one of the three detainees mentioned in the last report, *Ephrem Setako* has already begun, as mentioned above. The trial of *Michel Bagaragaza* whose referral to the Netherlands was revoked, was anticipated to be completed in 2008. However, as the negotiations for a guilty plea agreement have failed, a new trial date has to yet be set in order to allow both parties to prepare their case. The President will assign the case to a Trial Chamber shortly. For all pre-trial matters in the case of *Callixte Nzabominana,* the President designated Trial Chamber I. This Accused was transferred to the Tribunal in February 2008.

21. Two further accused arrested last year, were transferred to the Tribunal during the reporting period: Dominique Ntawukulilyayo[8] and Augustin Ngibaratware. The first, Ntawukulilyayo, was transferred from France on 5 June 2008. His case was initially earmarked for referral to a national jurisdiction for trial based on the evidence available at the time. After his arrest, the Prosecutor obtained additional evidence indicating that Ntawukulilyayo played a more significant role than initially perceived in the 1994 Rwandan genocide. In addition, the Prosecutor considered the difficulty of a successful referral of the case because of, among other reasons, the newly discovered information. Therefore, the case was brought before the Tribunal. At his initial appearance held on 11 June 2008, Ntawukulilyayo pled not guilty to the three counts in the Indictment. Ngibaratware was transferred from Germany on 8 October 2008. Two days later, he made an initial appearance pleading not guilty to all ten counts in the Indictment. In September 2008, the President designated two sections of Trial Chamber II to deal with all pre-trial matters in those two cases.

22. Léonidas Nshogoza, a former Defence investigator in the *Kamuhanda* case, is indicted for contempt of the Tribunal under Rule 77 of the Rules. The trial was scheduled to commence before a section of Trial Chamber III on 29 September 2008 but due to a dispute related to the legal

[8] In the Indictment, the Accused was named Dominique Ntawukuriryayo. The Accused has clarified that the correct spelling of his name is Ntawukulilyayo.

representation of the Accused, the commencement was postponed. The dispute was resolved on 13 October 2008, and a pre-trial conference was subsequently held on 22 and 30 October 2008. The trial is now expected to commence in the first week of February 2009.

23. On 28 August 2008, the Appeals Chamber overturned the convictions of Tharcisse Muvunyi by Trial Chamber II for certain counts and quashed his conviction for direct and public incitement to commit genocide based on a speech he gave at the Gikore Trade Center. The Appeals Chamber ordered a re-trial limited to the allegations considered in relation to this incident. The President will designate a Trial Chamber for the re-trial shortly.

f. Requests for Referral (Annex 4)

24. Since June 2007, the Prosecutor has requested the transfer of the cases of one fugitive, Fulgence Kayishema, and of four Accused detained at the Tribunal (Gaspard Kanyarukiga, Idelphonse Hategekimana, Yussuf Munyakazi and Jean-Baptiste Gatete) to Rwanda. In three decisions in respect of the Accused Munyakazi (28 May 2008), Kanyarukiga (6 June 2008) and Hategekimana (19 June 2008), the requests for referral were denied by different sections of the Trial Chambers. In the cases of *Munyakazi* and *Kanyarukiga,* the Appeals Chamber confirmed on 9 October and 30 October 2008 the denial of the referral by section of Trial Chambers III and I, respectively.

25. The appeal on the Trial Chamber decision on *Hategekimana* is still pending, and a decision is expected before the end of 2008. It may follow the results in *Munyakazi* and *Kanyarukiga*, given that the issues for determination were similar in all three appeals. The other requests for the referral of the *Gatete* and *Kayishema* cases are under consideration in the Trial Chambers, awaiting the decisions of the Appeals Chamber. Pending those decisions, provisions are being made for the eventuality that all four cases concerning detainees[9] will be tried before the Tribunal, while Kayishema is still at large. The Security Council will continue to receive updated information regarding the remaining referral cases.

26. At present, Trial Chambers I and III are overseeing the trial-readiness of the cases of *Gatete*, *Hategekimana*, *Kayishema* and *Munyiakazi*, in parallel with the Rule 11 *bis* proceedings. During the reporting period, Trial Chamber I issued five written decisions in the *Kanyarukiga* and *Gatete* cases, including consideration of *amici curiae* requests from the Republic of Rwanda, the International Criminal Defence Attorneys Association (ICDAA), as well *Ibuka* and *Avega* (organisations for genocide survivors). Trial Chamber III issued four decisions in the case of *Kayishema*, including one order to appoint Defence counsel to represent the interests of the Accused in his absence.

B. Activities at the Appeals Chamber

27. The Appeals Chamber delivered its judgement in the case of *Tharcisse Muvunyi,* as mentioned above, on 29 August 2008, bringing to 26 the total number of persons whose appeals have been completed. In that judgement, the Appeals Chamber overturned convictions for genocide, direct and

[9] *Gatete, Hategekimana, Kanyarugika, Munyakazi.*

public incitement to commit genocide based on a speech given by Muvunyi in Gikonko, and other inhumane acts as a crime against humanity. It further ordered retrial on one count pursuant to Rule 118 of the Rules.

28. The Appeals Chamber is presently seized of an appeal from judgement in the case of François Karera. The appeal in the *Karera* case was filed in January 2008. The Appeals Chamber heard oral arguments in this case on 28 August 2008, and it is anticipated that the Appeals Chamber will deliver a judgement on the case shortly after the end of the year. Since the last report in May 2008, in addition to the *Muvunyi* judgement, the Appeals Chamber issued two decisions concerning referrals to Rwanda, as mentioned above, two decisions disposing of interlocutory appeals, eleven decisions concerning review or other requests, and 58 pre-appeal orders and decisions.

2. MEASURES IMPLEMENTING THE COMPLETION STRATEGY

29. The following section supplements prior reports and highlights essential tools and elements of the Tribunal's efforts to comply with its Completion Strategy.

A. Management of Trial Work

a. Judicial Calendar

30. The particularly high workload level at the Tribunal at this stage of its operation requires strong management of its resources to optimize their use. Every six months, the Office of the President issues for this purpose a Judicial Calendar, after consultation with the Presiding Judges, taking into account the particularities of each case and the overall workload in Chambers. The scheduling of individual cases is done by the Trial Chambers in consultation with the parties, taking into consideration the requirements of a fair trial.

31. The Judicial Calendar aims to optimize the use of courtrooms and to stress the efficient use of time and resources. Between May 2008 and November 2008, seven different sections of the Trial Chambers used the four courtrooms of the Tribunal in nine different cases. Other Trial Chamber sections used the courtrooms as well, dealing with pre-trial matters and referral decisions.

32. The last report indicated the time standards used for projections in the Judicial Calendar for single-accused cases. The projections remain based on a ten-week average for the presentation of both Prosecution and Defence evidence. This period can be longer, depending on the availability of courtroom facilities and in particular taking into account the fact that most judges sit in at least two cases simultaneously. However, a shorter time period may be sufficient under specific circumstances, such as in the contempt case of *Nshogoza* or the retrial of *Muvunyi*. Time standards are also used, for example, for the average six to eight week break between the presentation of the Prosecution and the Defence case. After closure of the Defence case, another break is required to allow the parties to

prepare and file their closing briefs. This break is projected to average of two months, subject to any imperatives caused by translation needs. Thereafter, closing arguments should not be heard later than three weeks after filing of the closing briefs. For the drafting of the judgement, the average time for planning purposes has been slightly modified to four months on average for a single-accused case. Again, the involvement of a Trial Chamber and its support team in several cases at the same time will have an impact on the time required for writing the judgement.

33. At present, all multi-accused cases are already in the defence phase of presenting evidence or beyond. The projections for multi-accused cases require more flexibility than for single-accused cases. Recent experience has shown that Trial Chambers have difficulties meeting the prior projection of a six-month average for judgement drafting. Therefore, the projections for each multi-accused cases are constantly reviewed, in close coordination with the presiding Judges.

b. Management of Proceedings

34. Prior reports have described practices developed by the Trial Chambers to ensure the smooth and expeditious conduct of trials while upholding the requirements of trial fairness and protecting the rights of the accused. Measures have been developed to improve trial-readiness of cases by pre-prosecution and pre-defence status conferences. With a view to the upcoming workload in 2009, particular efforts are being made to further improve the management of proceedings. Two external consultants have assisted these efforts in October and November 2008.

35. The Trial Chambers also work on further streamlining proceedings during the on-going trials. In particular, the parties' closing arguments have in many cases presented a particular challenge for an expeditious trial due to their length. In the *Military I* case, for example, the closing briefs averaged 830 pages for each of the four accused and the Prosecution. In May 2008, the Tribunal organized a seminar for both Prosecution and Defence Counsel on writing and presenting closing arguments to the Trial Chambers. The main goal was to discuss the expectations of Trial Chambers when receiving the parties' closing arguments and the role of the written arguments as persuasive tools. In addition, the Trial Chambers have worked in cooperation with the parties to determine a maximum number of pages for closing briefs.

c. Performance Standard Tools

36. The successful accomplishment of the Tribunal's goal to meet the requirements of the Completion Strategy can be facilitated through objective performance standards to evaluate achievements and to identify and address difficulties. They are also helpful for purposes of internal and external audit.

37. The Office of the President has developed a number of performance standard tools for this purpose, including charts presenting the percentage of use of each courtroom over the year, the actual

hours spent in court against the projected judicial calendar for each case and the compilation of statistics connected with the progress of cases. These grids are continuously updated, fine-tuned and analysed.

B. Judges and Staff Management

a. Judges

38. Currently, 11 permanent judges serve at the Tribunal, including two assigned to the Appeals Chamber. In addition, nine *ad litem* judges serve in Arusha. Two of the permanent judges and one *ad litem* judge will resign at the end of 2008. The Tribunal is in the process of addressing replacement for them. Nine additional *ad litem* judges have been elected by the General Assembly, but not appointed yet to serve at the Tribunal. On 18 July 2008, the Security Council adopted Resolution 1824, which extended the terms of office of all permanent and *ad litem* judges of the Tribunal until 31 December 2009, or until the completion of the cases to which they are assigned if sooner. This decision is essential in ensuring that the Tribunal can plan and conduct trials with the required stability.

39. Different from how their function was initially conceived, the *ad litem* judges have worked in the same way and with the same workload as permanent judges, thereby contributing greatly to the Tribunal's achievements and making the simultaneous hearing of an increased number of cases possible. By 31 December 2008, seven *ad litem* judges will have served at the Tribunal for more than three years continuously. Despite this comparable work situation of permanent and *ad litem* judges, the status of *ad litem* judges differs from the status of permanent judges with regard to benefits and pension rights. The different status currently also requires that a permanent judge be part of each Trial Chamber. With more new cases to start soon, this issue should be addressed. The Tribunal is currently discussing related suggestions for possible amendments to the Statute for submission to the Security Council.

40. The President of the Tribunal also continues to explore mechanisms to enable the Appeals Chamber to deal with the substantially increased work load to be expected in 2009 and 2010, in light of the increased number of first instance judgements to be issued.

b. Staff Management

41. The Tribunal's capacity to comply with the Completion Strategy depends on its ability to retain competent, knowledgeable and experienced staff whose services are required for the successful achievement of its mandate. The Tribunal, therefore, seeks the continuing support of the Security Council and the Member States to ensure the retention of essential and most experienced staff until the end of its mandate.

42. As indicated in earlier reports, the problem of staff retention is a major source of concern to the Tribunal. With the end of Tribunal's mandate approaching, the situation is even more critical than before because of continuing high staff turnover and the inability to offer long-term appointments. The steady progression and completion of trials envisaged for 2009 may not be assured if the continued loss of staff remains unabated. There is therefore a need to address the issue of predictability of employment for essential staff until the completion of our work.

43. To cushion the impact of the Tribunal's drawdown plan and address the exceptional situation that comes with it, the Tribunal has engaged the support of the Department of Management, especially at the Office of the Controller and Office of Human Resources Management, to explore and adopt flexible exceptional measures and a common strategy in order to face the challenges of downsizing and to ensure that the Tribunal completes its work within the set timeframes.

44. A significant increase in the judicial workload for the biennium 2008-2009 results from the arrest of three fugitives and the revision of the trial schedule for 2009, due to changes in the completion schedule of trials projected to end in 2008. The Secretary-General submitted the Tribunal's revised estimates for 2008-2009, including additional requirements for the retention of staff to support the trials planned for 2009.

C. Work of the Office of the Prosecutor

45. Since 2004, when all new investigations in respect of the genocide were completed, the Office of the Prosecutor ("OTP") and its investigators have increasingly focused on support for preparation and conduct of trials, appeals and requests for referral of cases to national jurisdictions. For the pre-trial phase of each case, this means in particular ensuring the trial-readiness of all evidence, including the witnesses. Furthermore, additional investigations may be required during a trial to provide for additional and corroborating evidence and to address the Defence case, including any necessary rebuttal evidence.

46. The OTP Tracking Team continues to intensify its efforts in locating the 13 remaining fugitives. The Prosecutor intends to request the referral of nine of these cases to national jurisdictions for trial. However, four of them are earmarked for trial at the Tribunal because of the leadership roles played by the Accused during the 1994 genocide (Félicien Kabuga, Protais Mpiranya, Augustin Bizimana and Idelphonse Nizeyimana).[10] Their possible arrest and transfer to the Tribunal would require a reassessment of the Tribunal's judicial calendar. The Security Council will be promptly informed of any new development in the matter.

47. The Prosecutor has accepted the Rwandan government's exercise of concurrent jurisdiction in the prosecution of four senior military officers for war crimes, without prejudice to the primacy of the ICTR jurisdiction over these crimes. The Prosecutor set up a monitoring mechanism for the trial to

[10] Augustin Bizimana, former Minister of Defence; Félicien Kabuga, Businessman and Financier of RTLM and the *interahamwe* militia; Major Protais Mpiranya, former Commander of the Presidential Guard; Captain Idelphonse Nizeyimana, former head of military intelligence and operations at ESO.

ensure its effective, expeditious, fair and public conduct. The judgment, delivered by a Rwandan Military Court on 24 October 2008, acquitted two generals and convicted two captains.

48. In addition to new trials and referrals of cases (see below), the work of the Office of the Prosecutor focuses on the increasing workload of its Appeals and Legal Advisory Division that will take up the applications and appeals from the several judgements expected to be delivered in 2008 and 2009.

D. Referrals

49. Following the Tribunal's mandate, as set out in its Statute and Security Council Resolutions 1503 (2003) and 1534 (2004), the judicial activity of the Tribunal is focused on those individuals who allegedly were in positions of leadership, and those who allegedly bear the greatest responsibility for the genocide. As pointed out in earlier reports, the assessment of the Prosecutor as to whether an individual falls under this category is determined by a variety of factors, including the alleged status and extent of the participation in the genocide and evidence available, the possible connection with other cases, the relevant geographical areas, the availability of evidence with regard to the individual concerned and the ability of a State to deal with the case nationally. If such States willing to prosecute the alleged perpetrators exist, the Prosecutor will consider a referral request under Rule 11 *bis* of the Rules of Procedure and Evidence, after verifying whether the Accused would receive a fair trial if the case were to be referred and the death penalty would not be imposed.

50. In view of the fact that the Completion Strategy of the ICTR rests significantly on the referral of some of the cases to national jurisdictions, the Prosecutor continues to hold discussions with various States. The difficulties in finding adequate national jurisdictions for handling cases, such as strained judicial systems or lack of cooperation agreements, have been highlighted in the last report.

51. As mentioned earlier, of the five requests for referral of cases to Rwanda brought before the Trial Chambers, three have been denied by the Chambers, and two of those Trial Chamber decisions have been confirmed on appeal. The Appeals Chamber in its decisions of 9 and 30 October 2008 in the *Munyakazi* and *Kanyarukiga* cases agreed with the Trial Chambers' concerns relating to the ambiguity about the applicable Rwandan law concerning the risk of solitary confinement, and the availability and protection of witnesses from both within and outside Rwanda. The decisions will probably have an impact on the remaining Trial Chambers' decisions as well as the forthcoming Appeals Chamber's decision, all of which concern the same referral State. In the meantime, on 3 November 2008, Rwanda has passed an amendment to the law excepting transferees from the ICTR and other States from the provisions of solitary confinement upon conviction. The Prosecutor is analysing the decisions of the Appeals Chamber as well as the new Rwandan legal framework and will draw the necessary conclusions with regard to current and future requests for referral under Rule 11 *bis*.

E. Cooperation between States and the Tribunal

52. The Tribunal depends on the continued assistance of Member States to accomplish its mandate. Cooperation is required in many aspects, including arrests of fugitives, possible transfer of cases, enforcement of sentences and relocation of acquitted persons and persons who have served their sentence.

53. The arrest of the 13 remaining fugitives remains a core element of the Tribunal's mandate to bring justice, peace and reconciliation to Rwanda and the Great Lakes region. These arrests cannot be achieved without the full cooperation of States. The Prosecutor continues to undertake diplomatic missions to several States with a view to securing their political support and cooperation for the arrest and transfer of the remaining fugitives.

54. At present, the Tribunal has signed Agreements with seven States on the enforcement of sentences. On 3 November 2008, the President signed decisions for the transfer of nine convicts for the enforcement of their sentences to one of those States[11]. Transfer decisions for further detainees will be signed within the near future.

55. Cooperation between the Office of the Registrar and a State has been successful in providing for a place of relocation for one acquitted person, and efforts continue to be made in order to find a host country for the other acquitted who remains at present in Arusha.

56. Consistent with its mandate and obligation to fight the culture of impunity, the Office of the Prosecutor will be hosting a forum in November 2008 for selected national prosecution authorities, regional courts and representatives of important civil society stakeholders to discuss ways of enhancing cooperation. As part of the continuing consultative process, early next year the Office of the Prosecutor will host the 5th Annual Colloquium for International Prosecutors which will focus on the challenges of completion and the proper closure of the *ad hoc* tribunals.

F. Outreach and Capacity-Building

57. The Tribunal has continued its work to improve awareness of the achievements and the work of the ICTR through its outreach programme. During the reporting period, the Tribunal conducted awareness-raising workshops, specifically targeting Rwandans living in rural areas and youths in secondary and higher institutions of learning across the country. Rwandan students and teachers were provided with information about the activities of the Tribunal and its contribution to the justice and reconciliation process in the country.

58. The Rwandan judicial sector is the focus of the capacity building programs initiated by ICTR. A strengthened judicial sector can assist the Tribunal in implementing the Completion Strategy by enabling the future transfer of cases. The Tribunal has continued in 2008 and intends to continue in 2009 its training work for Rwandan judges, prosecutors and court staff, including training sessions in

[11] The name of the Member State is being kept confidential until the transfer procedures have been completed.

international criminal law, adversarial criminal procedures and court information management. Beyond Rwanda, the Tribunal continues to share with other countries in Africa the wealth of knowledge and systems built over the years in the wider areas of rule of law, governance and administration of justice.

59. Furthermore, the ICTR Library has contributed to strengthening the judicial and academic sectors through its training sessions in regard to a variety of themes including online research methods and library/information management. To date, more than 450 participants have been trained including Judges, Bar Association and prosecution lawyers, law students and library students.

60. As in previous years, the Tribunal would like to express its gratitude to the European Commission for its contributions over many years to the Tribunal's Voluntary Trust Fund for capacity-building activities, as well as for the individual support of Member States. With the end of the Tribunal's mandate approaching, time is pressing to complete ongoing projects and to conduct new projects which are considered essential. Therefore, further contributions from States are encouraged to support this task which is crucial to the Tribunal's mandate.

G. Legacy and Residual Issues

61. The Tribunal continues to actively prepare for the period after the completion of its mandate and works on ensuring its legacy. In coordination with the International Criminal Tribunal for Former Yugoslavia ("ICTY"), consultations and discussions are undertaken with various organs and stakeholders, including the Office of Legal Affairs.

62. Residual issues were also the focus of a visit of representatives of the Security Council to the Tribunal in September 2008 when the visitors could receive a first-hand-impression of the daily work at the Tribunal and engage in discussions with representatives of all three organs of the Tribunal.

63. One of the most important issues on legacy is the preservation of the Tribunal's Archives which will help to ensure not only a lasting impact of the Tribunal's work, but also to prevent the crimes committed in Rwanda in 1994 from being forgotten or denied. Both ICTR and ICTY work closely together on this issue with the Office of Legal Affairs and the Department of Management. The Report of the Advisory Committee on the Archives ("ACA"), which has been prepared after wide consultations with all important stakeholders, including governments, victims groups and international and regional organizations, is currently being finalized by both Tribunals. On the basis of the final report, recommendations will be made to the Security Council for its consideration.

64. The Legal Library and Reference Section has embarked upon the compilation of a comprehensive full-text searchable ICTR Basic Documents and Case Law project that is available in CD-ROM, DVD and web (www.ictrcaselaw.org) formats. The variety of formats addresses the digital divide and ensures accessibility to the ICTR case law regardless of information technology and internet connectivity status.

CONCLUSION AND UPDATED PROGNOSIS REGARDING THE IMPLEMENTATION OF THE COMPLETION STRATEGY

65. This report reveals that the Tribunal is in a difficult phase. Its current and upcoming workload is exceptionally high, and recent developments show that this workload will probably increase much more than expected in 2009, in particular due to the denied referral of cases to Rwanda, which will probably add up to four additional cases. The Tribunal remains strongly committed to the goal of completing first instance trials within its now extended mandate, i.e. until end of 2009. Whether this goal can be ultimately achieved, will depend, however, on the final number of new cases that will be tried before the Tribunal next year.

66. As mentioned above, one judgement has been delivered (*Nchamihigo*) and five judgements involving eight accused are expected within the next months (*Bikindi*, *Military I*, *Renzaho*, *Rukundo* and *Zigiranyirazo*). Closing arguments in the *Bizimungu et al.* case will be heard in December 2008, the closing arguments in the *Nsengimana* case will follow soon. Also before the end of 2008, the evidence phase of the longest-running trial involving the largest number of accused (*Butare*), as well as the evidentiary phase of the *Military II* case, involving four co-accused, will be completed. As previously indicated, the evidence phase in the *Karemera et al.* case will spill into 2009. The evidence phase in two other single-accused cases, *Kalimanzira* and *Setako*, will also run into the first half of 2009, due to particular circumstances explained above. The single-accused case of *Nshogoza* will start at the beginning of 2009. Following the recent transfer to the Tribunal of three arrested persons (Nzabonimana, Ntawukulilyayo and Ngibaratware) and taking into account Trial Chambers' occupancy rate, their cases are now also scheduled to commence in the first half of 2009. Also in the first half of 2009, the *Bagaragaza* case will start. All in all, the Tribunal anticipates that it will be writing judgements and conducting trials in at least 12 cases involving 25 accused in 2009.

67. The exceptionally high workload facing the Tribunal in 2009 will require the continued service of our competent and dedicated judges and staff. The goals of the Completion Strategy can only be achieved if adequate resources are provided.

68. A workload of this magnitude requires best efforts to further improve the management of trials and to build on the tools that have already been created for this purpose. The management of cases will be vastly different next year: The fact, that there is already a satisfactory factual record that is judicially verified, will enable the Prosecution to concentrate on establishing the essential elements of the crimes charged in the indictments. As a result, the duration of the prosecution case in each of the new trials will be appreciably briefer. The employment of principles of differentiated case management and reorganisation of resource deployment in Chambers will further support effective judicial management, while maintaining the strict requirements of fair adjudicative processes.

69. The referral of cases to national jurisdictions has been from the beginning an essential element of the Completion Strategy. The recent decisions of the Appeal Chamber confirming the denial of the referral of the cases of *Munyakazi* and *Kanyarugika* to Rwanda, could have a significant impact on this strategy. In view of the remaining pending requests for referrals to Rwanda, this could mean, ultimately, that up to four additional new trials would need to be held at the Tribunal. Current

projections already establish a contingency plan for this potential line of events. Further adjustments will be required, however, depending on the concrete number of new cases.

70. The continued support of the Member States remains indispensable for the Tribunal to achieve its mandate, for cooperation in regard to arrests, transfers, referrals and enforcement of sentences, and for ensuring that adequate resources enable the Tribunal to pursue the completion goals successfully.

ANNEX 1 (A)

STATUS OF JUDGEMENTS DELIVERED, AS OF 3 NOVEMBER 2008: 37 ACCUSED IN 31 JUDGEMENTS

Case No.	Name	Former Title	Initial appearance	TC	Judgement
1	J. P. Akayesu	Bourgmestre of Taba	30 May 1996	TC1	2 September 1998
2	J. Kambanda	Prime Minister	1 May 1998	TC1	4 September 1998 (guilty plea)
3	O. Serushago	Businessman, Interahamwe leader	14 December 1998	TC1	5 February 1999 (guilty plea)
4	C. Kayishema	Prefect of Kibuye	31 May 1996	TC2	21 May 1999 (joinder)
	O. Ruzindana	Businessman	29 October 1996		
5	G. Rutaganda	Businessman, 2nd Vice-president of Interahamwe	30 May 1996	TC1	6 December 1999
6	A. Musema	Businessman	18 November 1997	TC1	27 January 2000
7	G. Ruggiu	RTLM Journalist	24 October 1997	TC1	1 June 2000 (guilty plea)
8	I. Bagilishema	Bourgmestre of Mabanza	1 April 1999	TC1	7 June 2001
9	G. Ntakirutimana	Doctor	2 December 1996	TC1	21 February 2003 (joinder)
	E. Ntakirutimana	Pastor	31 March 2000		
10	L. Semanza	Bourgmestre of Bicumbi	16 February 1998	TC3	15 May 2003
11	E. Niyitegeka	Minister of Information	15 April 1999	TC1	15 May 2003
12	J. Kajelijeli	Bourgmestre of Rukingo	19 April 1999	TC2	1 December 2003
13	F. Nahimana	RTLM Director	19 February 1997	TC1	"*Media* Case" (joinder) 3 December 2003
	H. Ngeze	Kangura Editor	19 November 1997		
	J.-B. Barayagwiza	Director, Ministry of Foreign Affairs	23 February 1998		
14	J. Kamuhanda	Minister of Culture and Education	24 March 2000	TC2	22 January 2004
15	A. Ntagerura	Minister of Transport	20 February 1997	TC3	"*Cyangugu* Case" (joinder) 25 February 2004
	E. Bagambiki	Prefect of Cyangugu	19 April 1999		
	S. Imanishimwe	Lieutenant in FAR	27 November 1997		
16	S. Gacumbitsi	Bourgmestre of Rusumo	20 June 2001	TC3	17 June 2004
17	E. Ndindabahizi	Minister of Finance	19 October 2001	TC1	15 July 2004
18	V. Rutaganira	Councillor of Mubuga	26 March 2002	TC3	14 March 2005 (guilty plea)
19	M. Muhimana	Councillor of Gishyita	24 November 1999	TC3	28 April 2005

20	A. Simba	Lieutenant-Colonel in FAR	18 March 2002	TC1	13 December 2005
21	P. Bisengimana	Bourgmestre of Gikoro	18 March 2002	TC2	13 April 2006 (guilty plea)
22	J. Serugendo	Technical Director, RTLM	30 September 2005	TC1	12 June 2006 (guilty plea)
23	J. Mpambara	Bourgmestre of Rukara	8 August 2001	TC1	12 September 2006
24	T. Muvunyi	Commander, Ecole Sous-officiers	8 November 2000	TC2	12 September 2006
25	A. Rwamakuba	Minister of Education	7 April 1999	TC3	20 September 2006
26	A. Seromba	Priest, Kivumu Commune	8 February 2002	TC3	13 December 2006
27	J. Nzabirinda	Youth organizer	27 March 2002	TC2	23 February 2007 (guilty plea)
28	J. Rugambarara	Bourgmestre of Bicumbi	15 August 2003	TC2	16 November 2007 (guilty plea)
29	GAA	Witness before ICTR proceedings	10 August 2007	TC3	4 December 2007 (contempt of Tribunal)
30	F. Karera	Prefect of Kigali	26 October 2001	TC1	7 December 2007
31	S. Nchamihigo	Deputy Prosecutor of Cyangugu	29 June 2001	TC3	24 September 2008

ANNEX 1 (B)

CASES WHERE JUDGEMENT DELIVERY IS AWAITED: 8 ACCUSED IN 5 CASES

Case No.	Name	Former Title	Initial appearance	TC	Judgement
31	T. Bagosora	Dir. of Cabinet, Ministry of Defence	20 February 1997	TC1	"*Military I* Case" (joinder). Started on 2 April 2002. Closing arguments from 28 May to 1 June 2007. Judgement scheduled for 18 December 2008.
	G. Kabiligi	Brigadier-General in FAR	17 February 1998		
	A. Ntabakuze	FAR Battalion Commander	24 October 1997		
	A. Nsengiyumva	Lieutenant-Colonel in FAR	19 February 1997		
32	T. Renzaho	Prefect of Kigali	21 November 2002	TC1	Started on 8 January 2007. Closing arguments on 14 and 15 February 2008. Judgement expected soon.
33	E. Rukundo	Chaplain	26 September 2001	TC2	Started on 15 November 2006. Closing arguments on 20 February 2008. Judgement expected soon.
34	S. Bikindi	Musician	4 April 2002	TC3	Started on 18 September 2006. Closing arguments on 28 and 29 May 2008. Judgement scheduled for 2 December 2008.

35	P. Zigiranyirazo	Businessman	10 October 2001	TC3	Started on 3 October 2005. Closing arguments on 26 and 27 May 2008. Judgement scheduled for 18 December 2008.

ANNEX 1 (C)

CASES WHERE TRIAL IS CLOSED BUT CLOSING ARGUMENTS ARE YET TO BE HEARD: 5 ACCUSED IN 2 CASES

1	H. Nsengimana	Rector, Christ-Roi College	16 April 2002	TC1	Started on 22 June 2007. Completion in September 2008. Judgement expected in 2009.
2	C. Bizimungu	Minister of Health	3 September 1999	TC2	"*Bizimungu et al.* case" (joinder). Started on 5 November 2003. Completion in June 2008. Judgement expected in 2009.
	J. Mugenzi	Minister of Commerce	17 August 1999		
	J. Bicamumpaka	Minister of Foreign Affairs	17 August 1999		
	P. Mugiraneza	Minister of Civil Service	17 August 1999		

ANNEX 1 (D)

ON-GOING TRIALS: 15 ACCUSED IN 5 CASES

	Name	Former Title	Initial Appearance	TC	Comments
1	P. Nyiramasuhuko	Minister of Family and Women's Affairs	3 September 1997	TC2	"*Butare* case" (joinder). Started on 12 June 2001. Completion in 2008. Judgement expected in 2009.
	A. S. Ntahobali	Interahamwe leader	17 October 1997		
	S. Nsabimana	Prefect of Butare	24 October 1997		
	A. Nteziryayo	Prefect of Butare	17 August 1998		
	J. Kanyabashi	Bourgmestre of Ngoma	29 November 1996		
	E. Ndayambaje	Bourgmestre of Muganza	29 November 1996		
2	A. Ndindilyimana	Chief of Staff of Gendarmerie	27 April 2000	TC2	"*Military II* case" (joinder). Started on 20 September 2004. Completion in 2008. Judgement expected in 2009.
	F-X Nzuwonemeye	FAR Battalion Commander	25 May 2000		
	I. Sagahutu	2IC of Reconn. Battalion	28 November 2000		
	A. Bizimungu	Chief of Staff of FAR	21 August 2002		

3	E. Karemera	Minister of Interior, V-P of MRND	7 April 1999	TC3	"*Karemera et al.* case" (joinder). Started on 27 November 2003. Started *de novo* on 19 September 2005. Completion and Judgement expected in 2009.
	M. Ngirumpatse	D-G of Ministry of Foreign Affairs, President of MRND	7 April 1999		
	J. Nzirorera	President of National Assembly, S-G of MRND	7 April 1999		
4	C. Kalimanzira	Acting Minister of Interior	14 November 2005	TC3	Started 30 April 2008. Completion in 2008. Judgement expected in 2009.
5	E. Setako	Colonel	22 November 2004	TC1	Started 25 August 2008. Completion and judgement expected in 2009.

ANNEX 2

AWAITING TRIAL: 5 ACCUSED WHOSE CASES WILL COMMENCE SHORTLY

Name	Former Title	Initial Appearance	TC	Likely Start Date
M. Bagaragaza	Director General of Tea Factory	16 August 2005	TC 2	Early 2009
A. Ngirabatware	Minister in the Interim Government	10 October 2008	TC 2	First half 2009
D. Ntawukulilyayo	*Sous-Préfet* of Butare *Préfecture*	10 June 2008	TC 3	First half 2009
C. Nzabonimana	Minister of Youth in the Interim Government	20 February 2008	TC 1	First half 2009
L. Nshogoza	Former Defence Investigator (Contempt of Court Case)	11 February 2008	TC2	February 2009

ANNEX 3

RETRIAL

Name	Former Title	Appeals Judgement	TC	Likely Start Date
T. Muvunyi	Interim Commander, ESO Camp	28 August 2008	tbc	Early 2009

ANNEX 4

FOUR DETAINEES AND ONE FUGITIVE FOR WHOM REFERRAL OF THE CASE HAS BEEN REQUESTED

Name	Former Title	Initial Appearance	Referral Chamber	Decision
I. Hategekimana	Lieutenant, Commander of Ngoma Camp, Butare	28 February 2003	TC3	Request denied; 19 June 2008
G. Kanyarukiga	Businessman	22 July 2004	TC1	Request denied, 6 June 2008; denial confirmed on appeal, 30 October 2008
J.-B. Gatete	Bourgmestre of Murambi	20 September 2002	TC1	
F. Kayishema	Inspector of police	Fugitive	TC3	
Y. Munyakazi	Interahamwe leader	12 May 2004	TC3	Request denied; 28 May 2008; denial confirmed on appeal, 8 October 2008

ANNEX 5

13 FUGITIVES

Augustin Bizimana	Idelphonse Nizeyimana
Felicien Kabuga	Ladislas Ntaganzwa
Fulgence Kayishema	Charles Ryandikayo
Protais Mpiranya	Charles Sikubwabo
Bernard Munyagishari	Jean Bosco Uwinkindi
Gregoire Ndahimana	Pheneas Munyarugarama
Aloys Ndimbati	